

## Department of Energy

## § 1015.1

### § 1014.8 Investigation and examination.

The DOE may investigate, or may request any other Federal agency to investigate, a claim and may conduct, or request another Federal agency to conduct, a physical examination of a claimant and provide a report of the physical examination.

### § 1014.9 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, or the claimant's attorney or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, the claimant may file suit in an appropriate U.S. District Court not more than 6 months after the notification is mailed.

(b) Before the commencement of suit and before the 6-month period provided in 28 U.S.C. 2401(b) expires, a claimant, or the claimant's duly authorized agent, or legal representative, may file a written request with the DOE General Counsel for reconsideration of a final denial of a claim. Upon the timely filing of a request for reconsideration the DOE shall have 6 months from the date of filing to decide the claim, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the request for reconsideration is filed. Final DOE action on a request for reconsideration shall be made in accordance with the provisions of paragraph (a) of this section.

### § 1014.10 Action on approved claims.

(a) Payment of any approved claim shall not be made unless the claimant executes (1) a Standard Form 1145, (2) a claims settlement agreement, or (3) a Standard Form 95, as appropriate consistent with applicable rules of the Department of Justice, Department of the Treasury, and the General Accounting Office. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and the attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) If the claimant or the claimant's agent or legal representative accepts any award, compromise, or settlement made pursuant to the provisions of section 2672 or 2677 of title 28, United States Code, that acceptance shall be final and conclusive on the claimant, the claimant's agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented. The acceptance shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

### § 1014.11 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than \$10,000 or to imprisonment for not more than 5 years, or both (18 U.S.C. 1001), and, in addition, to a forfeiture of \$2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

## PART 1015—COLLECTION OF CLAIMS OWED THE UNITED STATES

### Sec.

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AUTHORITY: 31 U.S.C. 3701-3719; Pub. L. 97-365, 96 Stat. 1754.

SOURCE: 53 FR 24624, June 29, 1988, unless otherwise noted.

### § 1015.1 Purpose.

This part establishes procedures for the Department of Energy (DOE) to collect, compromise, or terminate collection action on claims of the United States for money or property arising from activities under DOE jurisdiction. It specifies the agency procedures and

the rights of the debtor applicable to claims for the payment of debts owed to the United States. It incorporates, as appropriate, the Federal Claims Collection Standards (4 CFR parts 101–105). It sets forth procedures by which DOE:

- (a) Will collect claims owed to the United States;
- (b) Will determine and collect interest and other charges on those claims;
- (c) Will compromise claims; and
- (d) Will refer unpaid claims for litigation.

[53 FR 24624, June 29, 1988; 53 FR 27798, July 22, 1988]

**§ 1015.2 Applicability.**

(a) This part applies to all claims due the United States under the Federal Claims Collection Act, as amended by the Debt Collection Act (31 U.S.C. 3701–3719), arising from activities under the jurisdiction of DOE unless such claims are otherwise subject to applicable laws or regulations. For purposes of this part, claims include, but are not limited to, amounts due the United States from fees, loans, loan guarantees, overpayments, fines, civil penalties, damages, interest, sale of products and services, and other sources. This part provides the procedures for collection of claims by administrative offset under 31 U.S.C. 3716. DOE 2200.2, *Collection From Employees for Indebtedness to the United States*, provides the procedures for collection of claims by Federal salary offset under 5 U.S.C. 5514. The failure of DOE to include in this part any provision of the Federal Claims Collection Standards does not prevent DOE from applying the provision. The failure of DOE to comply with any provision of this part or of the Federal Claims Collection Standards shall not be available as a defense to any debtor in terms of affecting the merits of the underlying indebtedness.

(b) All claims due from Federal employees will be collected in accordance with DOE 2200.2, *Collection from Employees for Indebtedness to the United States*, or successor internal directives. DOE 2200.2 provides for hearings as required under 5 U.S.C. 5514 and 4 CFR part 102.

(c) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or

settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR parts 101–141, administered by the Director, Office of Transportation Audits, General Services Administration) and are otherwise excepted from these regulations.

(d) (1) Claims arising out of acquisition contracts, subcontracts, and purchase orders which are subject to the Federal Acquisition Regulation Systems, including the Federal Acquisition Regulation, 48 CFR subpart 32.6, and the Department of Energy Acquisition Regulations, 48 CFR subpart 932.6, shall be determined or settled in accordance with those regulations.

(2) Claims arising out of financial assistance instruments (e.g., grants, subgrants, contracts under grants, cooperative agreements, and contracts under cooperative agreements) and loans and loan guarantees shall be determined or settled in accordance with internal DOE directives. Relevant provisions currently are set forth primarily at 10 CFR 600.26 and 10 CFR 600.112(f).

[53 FR 24624, June 29, 1988; 53 FR 27798, July 22, 1988]

**§ 1015.3 Demand for payment.**

(a) A total of three progressively stronger written demands at not more than approximately 30-day intervals will normally be made unless a response or other information indicates that a further demand would be futile or unnecessary. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate offset, as provided in paragraph (d)(2) of this section, and/or referral for litigation.

(b) The initial written demand for payment should inform the debtor of the following:

- (1) The basis for the claim;
- (2) The amount of the claim;
- (3) Any right to a review of the claim within DOE;
- (4) The date by which DOE expects full payment and after which the account is considered delinquent (this is the due date and is normally not more than 30 days from the date the written initial demand was either mailed,

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hand-delivered, or otherwise transmitted);

(5) The provision for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date (see § 1015.4 for details regarding interest, administrative charges, and penalty charges); and

(6) The DOE's intent to utilize any applicable collection actions made available by the Debt Collection Act of 1982 and the Federal Claims Collection Standards. When determined necessary to protect the Government's interest, DOE may initiate any of the actions available under the referenced Act and/or Standards. These actions may include, but are not limited to, immediate referral for litigation, administrative offset (as provided in paragraph (d)(2) of this section), reports to credit bureaus, and referrals to collection agencies.

(c) If the debt is not paid by the date specified in the initial written demand, two progressively stronger demands shall be sent to the debtor unless a response or other information indicates that additional written demands would either be futile or unnecessary. These written demands will be timed so as to provide an adequate period of time within which the debtor could be expected to respond. While shorter periods of time are acceptable, intervals of approximately 30 days should be sufficient. Depending on the circumstances of the particular case, the demand letters may state:

(1) The amount of any late payment charge (interest, penalties, and administrative charges) added to the debt;

(2) That the delinquent debt may be reported to a credit reporting agency;

(3) That the debt may be referred to a private collection agency for collection;

(4) That the debt may be collected through administrative offset in accordance with the Federal Claims Collection Standards (4 CFR part 102); and

(5) That the debt may be referred for litigation.

(d)(1) Before collecting a debt by administrative offset, the debtor shall be advised of the following information either in the initial written demand and/or subsequent written demands, or by

separate notice of DOE's intent to collect the debt by administrative offset:

(i) Nature and amount of debt;

(ii) Payment due date;

(iii) The intent of DOE to collect by administrative offset (in accordance with the Federal Claims Collection Standards (4 CFR part 102)), including requesting other Federal agencies to help in the offset whenever possible, if the debtor has not made voluntary payment, has not requested a hearing or review of the claim within DOE as set out in paragraph (d)(1)(v) of this section, or has not made arrangements for payment as set out in paragraph (d)(1)(vi) of this section by the payment due date;

(iv) The right of the debtor to inspect and copy the DOE records related to the claim. Any costs associated therewith shall be borne by the debtor. The debtor shall give reasonable notice in advance to DOE of the date upon which it intends to inspect and copy the records involved;

(v) The right of the debtor to a hearing or review of the claim. DOE shall provide the debtor with a reasonable opportunity for an oral hearing when:

(A) An applicable statute authorizes or requires DOE to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(B) the debtor requests reconsideration of the debt and DOE determines that the question of indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although DOE will document all significant matters discussed at the hearing. This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and DOE has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, DOE is not required to sift through all of the requests received in order to accord oral

hearings in those few cases which may involve issues of credibility or veracity. In those cases where an oral hearing is not required by this section, DOE will accord the debtor a “paper” hearing, that is, DOE will make its determination on the request for waiver or reconsideration based upon a review of the written record. If the claim is disputed in full or in part, the debtor’s written response to the demand must include a request for review of the claim within DOE. If the debtor disputes the claim, the debtor shall explain why the debt is incorrect. The explanation should be supported by affidavits, canceled checks, or other relevant information. The written response must reach DOE by the payment due date. A written response received after the payment due date may be accepted if the debtor can show that the delay was due to circumstances beyond the debtor’s control or failure to receive notice of the time limit. The debtor’s written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion should be paid by the date stated in the initial demand. DOE shall notify the debtor, within 30 days whenever feasible, whether DOE’s determination of the debt has been sustained, amended, or canceled. If DOE either sustains or amends its determination, it shall notify the debtor of its intent to collect by administrative offset unless payment is received within 15 days of the mailing of the notification of its decision; and

(vi) The right of the debtor to offer to make a written agreement to repay the amount of the claim. The acceptance of such an agreement is discretionary with DOE. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, DOE will assess the debtor’s financial condition based on financial statements submitted by the debtor. Dependent upon the evaluation of the financial condition of the debtor, DOE and the debtor may agree to a written installment repayment schedule. The debtor should execute a confess-judgment note which specifies all of the terms of the arrangement. The size and frequency of the installment payments should bear a reasonable re-

lation to the size of the debt and the debtor’s ability to pay. Interest, administrative charges, and penalty charges shall be provided for in the note. The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation which shall provide that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Some form of objective evidence of these facts will be maintained in DOE’s file on the debtor.

(2) In cases in which the procedural requirements specified in this paragraph have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance, DOE is not required to duplicate those requirements before taking administrative offset. Furthermore, DOE may effect administrative offset against a payment to be made to a debtor prior to completion of the required procedures if failure to take the offset would substantially prejudice the Government’s ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset will be promptly followed by completion of those procedures. Amounts recovered by administrative offset found not to be owed to DOE shall be promptly refunded.

(e) At any time during the collection cycle, DOE may take any of the actions authorized under this section or under the Federal Claims Collection Standards. These actions include, but are not limited to, reports to credit bureaus, referrals to collection agencies, termination of contract, debarment, and administrative offset, as authorized in 31 U.S.C. 3701–3719.

[53 FR 24624, June 29, 1988; 53 FR 27798, July 22, 1988]

**§ 1015.4 Interest, administrative charges, and penalty charges.**

(a) DOE shall assess interest on unpaid claims at the rate of the current

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value of funds to the Treasury as prescribed by the Secretary of the Treasury on the date the computation of interest begins unless a higher rate of interest is necessary to protect the interests of the Government. DOE shall assess administrative charges to cover the costs of processing and handling overdue claims. Administrative charges will be assessed concurrent with the interest assessment and will be based on actual costs incurred or an average of additional costs incurred in processing and handling claims in similar stages of delinquency. DOE shall assess penalty charges of six percent a year on any part of a debt more than 90 days past due. Such assessment will be retroactive to the first day the debt became delinquent. The imposition of interest, administrative charges, and penalty charges is made in accordance with 31 U.S.C. 3717.

(b) Interest will be computed from the date the initial demand is mailed, hand-delivered, or otherwise transmitted to the debtor. If the claim or any portion thereof is paid within 30 days after the date on which interest began to accrue, the associated interest shall be waived. This period for waiver of interest may be extended in individual cases if there is good cause to do so and it is in the public interest. Interest will only be computed on the principal of the claim and the interest rate will remain fixed for the duration of the indebtedness, except where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. A new rate which reflects at a minimum the current value of funds to the Treasury at the time the new agreement is executed may be set, if applicable, and interest on interest and related charges may be charged where the debtor has defaulted on a previous repayment agreement. Charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under the new repayment schedule.

(c) DOE may waive interest, administrative charges, or penalty charges if it finds that one or more of the following conditions exist:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of interest, administrative charges, or penalty charges will jeopardize collection of the principal of the claim; or

(3) It is otherwise in the best interests of the United States, including the situation in which an offset or installment payment agreement is in effect.

(d) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply:

(i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) DOE may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

[53 FR 24624, June 29, 1988; 53 FR 27798, July 22, 1988]

### § 1015.5 Responsibility for collection.

(a) Heads of DOE Headquarters Elements and Field Elements or their designees must immediately notify the appropriate finance office of claims arising from their operations. A claim will be recorded and controlled by the responsible finance office upon receipt of documentation from a competent authority establishing the amount due.

(b) The collection of claims under the control of the finance offices will be aggressively pursued in accordance with the provisions of part 102 of the Federal Claims Collection Standards (4 CFR part 102). Whenever feasible, debts owed to the United States, together with interest, administrative charges, and penalty charges, should be collected in full in one lump sum. If the debtor requests installment payments, the finance offices will be responsible for determining the financial hardship of debtors and, when appropriate, shall

arrange installment payment schedules. Claims which cannot be collected directly or by administrative offset shall be written off as administratively uncollectible in accordance with authority delegated to the Heads of DOE Field Elements and the Controller.

(c) The Controller or designee, in consultation with the General Counsel or other designated Counsel at Headquarters, or Heads of DOE Field Elements or designees, in consultation with the Chief Counsels or other designated Counsels in field locations, may compromise or suspend or terminate collection action on referred claims that do not exceed \$20,000, exclusive of interest, penalties, and administrative charges, in accordance with the Federal Claims Collection Act and the Federal Claims Collection Standards parts 103 and 104 (4 CFR parts 103 and 104).

(d) Recommendations to compromise or suspend or terminate collection action on claims that exceed \$20,000, exclusive of interest, penalties, and administrative charges, will be referred to the Department of Justice consistent with paragraph (c) of this section and in accordance with the Federal Claims Collection Act and the Federal Claims Collection Standards. Referrals to the Department of Justice shall be made in accordance with 4 CFR part 105 of the Federal Claims Collection Standards.

**§ 1015.6 Collection by administrative offset.**

(a) *Administrative offset.* (1) Whenever feasible and not otherwise prohibited, after a debtor fails to pay the claim, request a review of the claim, or make an arrangement for payment, DOE shall collect claims under this part by means of administrative offset against obligations of the United States to the debtor, pursuant to 31 U.S.C. 3716. In appropriate circumstances, DOE may give due consideration to the debtor's financial condition or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will nor-

mally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement. Determination as to whether collection by administrative offset is feasible will be made by DOE on a case-by-case basis, in the exercise of sound discretion. DOE will consider not only whether administrative offset can be accomplished both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests.

(2) DOE will not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably be known by the DOE official or officials who were charged with the responsibility to discover and collect such debt.

(3) DOE is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(i) Debts owed by any State or local government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute.

However, unless otherwise provided for by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Salary offsets and offsets against military retired pay are governed by 5 U.S.C. 5514.

(5) Collection by administrative offset of amounts payable from the Civil Service Retirement and Disability Fund will be made pursuant to 31 U.S.C. 3716 and 5 U.S.C. 5705 and regulations thereunder.

(6) Collections made by administrative offset under 31 U.S.C. 3716, shall be in accordance with the procedural requirements set forth in § 1015.3(d) of this part.

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(b) *Interagency requests.* (1) Requests to DOE by other Federal agencies for administrative offset should be in writing and forwarded to the Department of Energy, Office of the Controller (MA-3), 1000 Independence Avenue, SW., Washington, DC 20585.

(2) Requests by DOE to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(3) Requests to DOE should be processed within 30 calendar days of receipt. If such processing is not practical or feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(4) Requests to or from DOE must be accompanied by a written certification that the debtor owes the debt (including the amount) and that the requesting agency has fully complied with the provisions of 4 CFR 102.3. DOE will cooperate with other agencies in effecting collection unless the offset would be otherwise contrary to law.

(5) If administrative offset cannot be effected through DOE or other known Federal agency accounts payable, then DOE will place a complete stop order against amounts otherwise payable to the debtor by placing the name of that debtor on the Department of the Army "List of Contractors Indebted to the United States." If any amounts are discovered under this procedure, they will be offset against the debt owed to DOE provided that applicable provisions of 4 CFR parts 101-105 have been met and the offset would not otherwise be contrary to law.

### § 1015.7 Settlement of claims.

(a) In accordance with the provisions of 4 CFR part 103, DOE officials listed in § 1015.5(c) of this part may settle claims not exceeding \$20,000, exclusive of interest, penalties, and administrative charges, by compromise at less than the principal of the claim if:

(1) The debtor shows an inability to pay the full amount within a reasonable time or refuses to pay the claim in full and DOE is unable to enforce collection in full within a reasonable time by enforced collection proceedings;

(2) There is real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts;

(3) The amount of the claim does not justify the actual foreseeable cost of collecting the claim; or

(4) A combination of the above reasons.

(b) DOE may suspend or terminate collection action in accordance with the terms and procedures contained in 4 CFR part 104.

### § 1015.8 Referral for litigation.

Claims on which aggressive collection action has been taken in accordance with 4 CFR part 102 and which cannot be compromised or on which collection action cannot be suspended or terminated under 4 CFR parts 103 and 104 will be referred to the General Accounting Office or the Department of Justice, as appropriate, in accordance with the procedures in 4 CFR part 105.

### § 1015.9 Disclosure to consumer reporting agencies and referral to collection agencies.

DOE may disclose delinquent debts to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and may refer delinquent debts to debt collection agencies under the revised Federal Claims Collection Standards and other applicable authorities. Information will be disclosed to reporting agencies and referred to collection agencies in accordance with the terms and conditions of agreements entered into between the General Services Administration, DOE, and the reporting and collection agencies. The terms and conditions of such agreements shall specify that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled.

**§ 1015.10 Credit report.**

In order to aid DOE in making appropriate determinations as to the collection and compromise of claims; the collection of interest, administrative charges, and penalty charges; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, DOE may institute a credit investigation of the debtor at any time following receipt of knowledge of the claim.

**PART 1016—SAFEGUARDING OF RESTRICTED DATA**

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AUTHORITY: Sec. 161i, 68 Stat. 948 (42 U.S.C. 2201).

SOURCE: 48 FR 36432, Aug. 10, 1983, unless otherwise noted.

GENERAL PROVISIONS

**§ 1016.1 Purpose.**

The regulations in this part establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an access permit. This part does not apply to Top Secret information since no such information may be forwarded to an access permittee within the scope of this regulation.

**§ 1016.2 Scope.**

The regulations in this part apply to all persons who may require access to Restricted Data used, processed, stored, reproduced, transmitted, or handled in connection with an access permit.

**§ 1016.3 Definitions.**

(a) *Access authorization or security clearance.* An administrative determination by the DOE that an individual who is either a DOE employee, applicant for employment, consultant, assignee, other Federal department or agency employee (and other persons who may be designated by the Secretary of Energy), or a DOE contractor or subcontractor employee and an access permittee is eligible for access to Restricted Data. Access authorizations or security clearances granted by DOE are designated as “Q,” “Q(X),” “L,” “L(X),” “Top Secret,” or “Secret.” For the purpose of this chapter only “Q,” “Q(X),” “L,” and “L(X)” access authorizations or clearances will be defined.

(1) “Q” access authorizations or clearances are based upon full field investigations conducted by the Federal Bureau of Investigation, Office of Personnel Management, or another Government agency which conducts personnel security investigations. They permit an individual to have access, on